

THE GLOBAL SHIPPING BUSINESS NETWORK AGREEMENT

A Cooperative Working Agreement

FMC Agreement No. ~~\_\_\_\_\_~~201344-001

Expiration Date: None

This Agreement Has Not Been Published Previously

TABLE OF CONTENTS

<u>Article</u>	<u>Title</u>	<u>Page</u>
ARTICLE 1:	NAME OF THE AGREEMENT	1
ARTICLE 2:	PURPOSES OF THE AGREEMENT	1
ARTICLE 3:	PARTIES TO THE AGREEMENT	1
ARTICLE 4:	GEOGRAPHIC SCOPE	2
ARTICLE 5:	AUTHORITY	2
ARTICLE 6:	ADMINISTRATION OF AGREEMENT	3
ARTICLE 7:	MEMBERSHIP	3
ARTICLE 8:	VOTING	3
ARTICLE 9:	DURATION, TERMINATION, AND EXPULSION	3
ARTICLE 10:	GOVERNING LAW/DISPUTE RESOLUTION	4
ARTICLE 11:	GENERAL PROVISIONS	4
1	NAME OF THE AGREEMENT	1
2	PURPOSES OF THE AGREEMENT	1
3	PARTIES TO THE AGREEMENT	1
4	GEOGRAPHIC SCOPE	2
5	AUTHORITY	2
6	ADMINISTRATION OF AGREEMENT	3
7	MEMBERSHIP	3
8	VOTING	3
9	DURATION, TERMINATION, AND EXPULSION	3
10	GOVERNING LAW/DISPUTE RESOLUTION	4
11	GENERAL PROVISIONS	4

## **ARTICLE 1: NAME OF THE AGREEMENT**

This agreement shall be known as the Global Shipping Business Network Agreement (“the Agreement”).

## **ARTICLE 2: PURPOSES OF THE AGREEMENT**

The purpose of this Agreement is to authorize the parties, each of which is party to a non-profit joint venture known as Global Shipping Business Network (sometimes referred to herein as “GSBN”),<sup>1</sup> to cooperate with respect to the operation of a platform for all shipping supply chain participants to work collaboratively to accelerate technology innovation and develop solutions through a blockchain-enabled, global trade digitized process that will enable shippers, authorities and other stakeholders to exchange information on supply chain events and documents (the “GSBN Platform”), and to collaborate with the Platform Provider (as hereinafter defined) on products and services to be offered on the GSBN Platform and the marketing of the products and services to be offered on the GSBN Platform.

Initially, the GSBN Platform shall be capable of performing the following functions: (i) providing application programming interfaces for the publication of and subscription to event data describing the physical progress of cargo through the supply chain and associated milestones, including events related to documents; (ii) storing documents in structured and unstructured form and sharing those documents with permissioned parties in the supply chain; and (iii) providing user interfaces and application programming interfaces for viewing event data, milestones, and documents, and managing users and access permission.

## **ARTICLE 3: PARTIES TO THE AGREEMENT**

The parties to the Agreement (hereinafter referred to individually as “Party” jointly as the “Parties”) are listed in Appendix A hereto. CargoSmart (Hong Kong) Limited (or its permitted assignees) is not a party to this Agreement, but is hereinafter referred to as the “Platform Provider.”

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<sup>1</sup> The joint venture also includes entities that are not ocean carriers or subject to the jurisdiction of the FMC, and therefore not Parties to this Agreement (i.e. ‘non-Party members of GSBN’). Such entities currently are: COSCO Shipping Ports Limited, Hutchison Ports Development Ltd., Qingdao Port International Co., LTD, PSA i-Tech Pte. Ltd., and Shanghai International Port (Group) Co. Reference to such joint venture members in this Agreement is solely for clarity and completeness, and is not intended to expand the jurisdiction of the FMC or to provide antitrust immunity for such members. See Article 5.6. Changes to the non-Party members of GSBN, or subscription of entities to the GSBN Platform, shall not require any amendment to this Agreement not otherwise required by the U.S. Shipping Act.

## **ARTICLE 4: GEOGRAPHIC SCOPE**

The scope of this Agreement is the trade between all ports in the United States and all ports worldwide (the “Trade”), including cargo movements originating and/or terminating at inland locations in the United States and all foreign countries.<sup>2</sup>

## **ARTICLE 5: AUTHORITY**

5.1 The Parties are authorized to discuss and agree, among themselves, with non-Party members of GSBN, and with the Platform Provider, on the operation, management and use of the GSBN Platform, including, among others, the adoption of application standards based on the industry’s business needs, security of data exchanged on the GSBN Platform and products and services to be offered on the GSBN Platform and the marketing of the products and services to be offered on the GSBN Platform.

5.2 The Parties are authorized to discuss and agree, among themselves, with non-Party members of GSBN, and with the Platform Provider, on services to be provided by the Platform Provider on the operation or development of the GSBN Platform and any terms and conditions relating to same.

5.3 The Parties are authorized to discuss and agree, among themselves, with non-Party members of GSBN, and with the Platform Provider, on the terms and conditions of, and the use of, transportation-related documents, including bills of lading, in blockchain and/or other electronic format.

5.4 It is the intent of the Parties that the authority contained in this Agreement be interpreted, exercised, and implemented in a manner that is consistent with applicable law, including Article 101 of the Treaty on the Functioning of the European Union and the U.S. Shipping Act of 1984, as amended. In furtherance of the foregoing, this Agreement does not authorize the Parties to discuss or agree upon: (a) the vessel capacity to be deployed by any of them; or (b) terms and conditions under which any Party provides ocean transportation services to individual customers (excluding for this purpose discussion of, or agreement on, generalized subjects such as best industry practices and similar non-competitive matters not specific to individual customers). It is understood and agreed that the data to be discussed by the Parties shall not include rates, charges or other terms and conditions agreed upon by a Party and its customer(s).

5.5 The Parties are authorized to discuss, agree upon and execute written agreements, among themselves, with non-Party members of GSBN, and with the Platform Provider, setting forth the details of agreements reached hereunder. Any such further agreements shall be

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<sup>2</sup> Although the activities described herein shall also be undertaken with respect to trades between countries other than the United States, such trades are not within the scope of the U.S. Shipping Act or the jurisdiction of the Federal Maritime Commission (“FMC”) and therefore are not included in this Agreement.

reflected in an amendment to this Agreement, if the filing of such an amendment is legally required.

5.6 It is understood that to the extent any non-regulated entity (including non-Party members of GSBN) participates in activities under this Agreement, such participation does not bring such entity(ies) under the FMC's jurisdiction, nor does it confer antitrust immunity on the non-regulated entity under the Shipping Act; provided that the participation of such non-regulated entities in activities under the Agreement shall not affect the regulatory jurisdiction of the FMC or the antitrust immunity conferred by the Shipping Act on the Parties for activities under this Agreement.

#### **ARTICLE 6: ADMINISTRATION OF AGREEMENT**

6.1 This Agreement shall be administered by the Parties, in coordination with the non-Party members of GSBN. The Parties may from time to time establish such committees or working groups as they deem necessary or desirable, which committees or working groups may include representatives of the non-Party members of GSBN and/or of the Platform Provider.

6.2 Upon action taken by the Parties, Agreement counsel<sup>3</sup> is hereby authorized to prepare amendments to this Agreement and information relating thereto, and to execute and file same with the Federal Maritime Commission.

#### **ARTICLE 7: MEMBERSHIP**

7.1 Membership in this Agreement is limited to the Parties; provided, however, that new parties may be added upon the unanimous agreement of the then-existing Parties, subject to filing an amendment to this Agreement, if required, with the Federal Maritime Commission.

7.2 No Party to this Agreement shall be prohibited from participating in any other e-commerce initiative.

#### **ARTICLE 8: VOTING**

Amendments to this Agreement shall require the unanimous agreement of the Parties.

#### **ARTICLE 9: DURATION, TERMINATION, AND EXPULSION**

9.1 This Agreement shall become effective on the date it enters into effect under the U.S. Shipping Act of 1984, as amended, and shall remain in effect indefinitely thereafter. This Agreement may be terminated by the unanimous vote of the Parties, less one or by the resignation of all Parties save one.

9.2 Any Party may resign from this Agreement by terminating its ownership interest in GSBN in accordance with the terms and conditions of the GSBN Shareholder's Agreement

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<sup>3</sup> Namely, Nixon Peabody LLP

and the filing of an appropriate amendment to the Agreement with the Federal Maritime Commission.

## **ARTICLE 10: GOVERNING LAW/DISPUTE RESOLUTION**

10.1 This Agreement and the rights and obligations of the Parties hereunder shall be governed by, and construed in accordance with, the laws of Hong Kong SAR, subject to the requirements of the U.S. Shipping Act, as amended.

10.2 If a dispute arises between or among two or more of the Parties in respect of, or in connection with this Agreement (including the validity, breach or termination of it), then, without prejudice to other right or entitlement such Parties may have under this Agreement or otherwise, the disputing Parties must explore in good faith whether the dispute can be resolved by agreement among them using informal dispute resolution techniques, such as negotiation, mediation, independent expert appraisal, or any other alternative dispute resolution technique. Except as the parties to a dispute may agree, the rules governing any alternative dispute resolution technique shall be those recommended by the Hong Kong Mediation Centre.

10.3 If any dispute is not resolved by agreement within 60 days of written notice of the dispute by a Party(ies) to another Party(ies) (or such additional period agreed to in writing by the parties to the dispute), any party to the dispute may refer the dispute to the courts of Hong Kong.

10.4 Subject to the requirement to explore alternative dispute resolution, each Party: (i) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Hong Kong SAR, and any courts with jurisdiction to hear appeals therefrom, in respect of any proceedings in connection with this Agreement; and (ii) waives any right it may have to object to an action being brought in the courts of Hong Kong SAR, including by claiming that those courts lack jurisdiction or that the action has been brought in an inconvenient forum.

## **ARTICLE 11: GENERAL PROVISIONS**

11.1 If any term or provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms and provisions of this Agreement shall nonetheless remain in full force and effect.

11.2 Any amendment or modification of this Agreement shall be in writing and shall be signed by authorized representatives of the Parties.

11.3 This Agreement may be executed in one or more counterparts, all of which, when taken together, shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been executed by each of the Parties and delivered to the other Parties. Each Party need not execute the same counterpart of this Agreement.

11.4 Except as otherwise provided herein or by agreement of the Parties, all notices under this Agreement, including for this purpose any certificate, consent, request, demand, approval, or other formal communication shall will be in legible writing and in English, signed

by the sender (for an individual) or for a company by an authorized representative or officeholder of the company, and marked to the attention of, and addressed to, the addressee. Notice may be sent by the following methods:

- 11.4.1 Hand delivery
- 11.4.2 Prepaid express post for next-day delivery
- 11.4.3 Email, or
- 11.4.4 Facsimile

For purposes of this Article, reference to an addressee includes an addressee's officers, agents, or employees, or any person reasonably believed by the sender to be an officer, agent, or employee of the addressee.

11.5 Unless a later time is specified, notice will be effective upon the earlier of receipt or the time it is taken to be received. Notices are taken to be received by the addressee if by:

- 11.5.1 delivery in person or by courier, when delivered to the addressee;
- 11.5.2 prepaid express post, on the second Business Day after the date of posting;
- 11.5.3 facsimile transmission, at the time shown in the transmission sheet generated from the machine from which the facsimile was sent, except that a facsimile received on a non-Business Day or after 4:00 p.m. in the place of receipt, is taken to be received at 9:00 a.m. on the following Business Day and takes effect from that time unless a later time is specified in the notice; or
- 11.5.4 electronic mail, four hours after the sent time (as recorded on the sender's email server) unless the sender receives a notice from the recipient's email server or internet provider that the message has not been delivered to the recipient; and also except that an email received on a non-Business Day or after 4:00 p.m. in the place of receipt, is taken to be received at 9:00 a.m. on the following Business Day and takes effect from that time unless a later time is specified in the notice

11.6. All notices should be addressed as follows:

<b>CMA CGM S.A.</b>	<b>HAPAG-LLOYD AG</b>
<del>Boulevard Jacques SAADE, 4 Quai d'Arené, 13002 Marseilles France Attn : Gillian Arnoux, Competition Compliance Manager</del>	Ballindamm 25 20095 Hamburg, Germany Attn: Martin Gnass Managing Director IT Email: martin.gnass@hlag.com

<p>Email: <u>ho.garnoux@ema-egm.com</u>  Attn: Madhana Kumar, Vice President,  Digital IT  Email: <u>ho.mkumar@ema-egm.com</u></p>	
<b>COSCO SHIPPING LINES CO. LTD</b>	<b>ORIENT OVERSEAS CONTAINER LINE LTD</b>
<p>378 Dong Da Min Road  Shanghai, People's Republic of China  20080  Attn: Ms. Yang Haipin  Email: yanghp@coscon.com</p>	<p>31/F Harbour Centre, 25 Harbour Road  Wan Chai, Hong Kong  Attn: Terry Leung  Email: Terry.leung@oocl.com</p>

Any Party may change its address by a notice given to the other Parties in the manner set forth above.

11.7 Each Party has a duty to protect confidential information that it receives from another Party. For purposes of this Agreement, "confidential information" means all confidential, non-public, or proprietary information, regardless of how the information is stored or delivered, exchanged between or among Parties relating to the business or affairs of the Parties.

11.7.1 A Party must not disclose any confidential information to any third party (other than non-Party members of GSB<sup>4</sup> to the extent permitted by the GSB Shareholders' Agreement) and must take all necessary steps to ensure that the confidentiality and security of the confidential information is protected.

11.7.2 A Party may disclose confidential information only:

- (i) On a confidential basis to its directors, officers and employees who need to know the information for the purpose of performing obligations or exercising rights under this Agreement.
- (ii) With the written consent of all other Parties (such consent not to be unreasonably withheld);
- (iii) To the extent required by applicable law, rule or regulation of any court, government entity, or stock exchange on which the Party (or an affiliated company is listed). In the event that confidential information is to be disclosed under this provision, the Party intending to disclose the information shall give reasonable advance

<sup>4</sup> As referred to in footnote 1 above.



notice to the other Parties, or if advance notice is not possible (such as a public announcement required by a stock exchange), as promptly after the disclosure as reasonably possible.

- (iv) On a confidential basis to its professional advisors for the purpose of obtaining professional advice.
- (v) As a media announcement in a form agreed to by GSBN. Or
- (vi) To the extent the information is otherwise in the public domain other than by a breach of the Agreement or the GSBN Shareholders' Agreement.

11.7.3 If a Party discloses confidential information under any of Article 11.7.2(i), (ii) of (iv), it must use all reasonable measures to ensure that those receiving the confidential information keep it confidential and do not disclose it except as permitted by Article 11.7.2.

11.7.4 No Party may use confidential information for the purpose of conducting any undertaking that may be similar to, or competitive with, GSBN and/or the GSBN Platform. Any Party that discloses confidential information to a third-party under any of Article 11.7.2(i), (ii) of (iv), must use all reasonable measures to ensure that such third-party does not use such information for the purpose of conducting any undertaking that may be similar to, or competitive with, GSBN and/or the GSBN Platform.

11.7.5 A Party that becomes aware of a breach of this Article 11.7 shall notify the other Parties immediately upon becoming aware of such breach, and must promptly take all reasonable steps within its control to prevent or stop any such breach.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of this \_\_\_\_ day of ~~May~~December 2020.

~~CMA CGM S.A.~~

HAPAG-LLOYD AG

~~By: \_\_\_\_\_~~  
~~Name:~~  
~~Title:~~

By: \_\_\_\_\_  
Name:  
Title:

COSCO SHIPPING LINES CO. LTD

ORIENT OVERSEAS CONTAINER LINE  
LTD

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**PARTIES TO THE AGREEMENT**

~~CMA CGM S.A.~~

~~Boulevard Jacques SAADE, 4 Quai d'Arene~~

~~13235 Marseilles Cedex 02, France~~

HAPAG-LLOYD AG

Ballindamm 25

20095 Hamburg, Germany

COSCO SHIPPING LINES CO. LTD

378 Dong Da Min Road

Shanghai, People's Republic of China

200080

ORIENT OVERSEAS CONTAINER LINE LTD

31/F Harbour Centre

25 Harbour Road

Wan Chai, Hong Kong